

Office of the Secretary of Defense

§ 295.6

actions have been taken on an initial request, the time for the appeal will not begin until the date of the last denial of release letter.

(2) A “no record” finding may be considered to be adverse, and if so interpreted by the requester, may be appealed using the normal OIG appeal procedures. The OIG will conduct an additional search of files, based on the receipt of an appeal to a “no record” response, as a part of the appellate process.

(3) All final decisions rendered on appeals will be made to the requesters in writing by the Appellate Authority, after consultation with the Office of General Counsel (OGC) representative to the OIG, and other appropriate OIG elements.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. The appeal will be deemed to have been received when it reaches the FOIA/PA Division, for administrative processing on behalf of the Appellate Authority. Misdirected appeals are to be referred expeditiously to the FOIA/PA Division.

(5) A requester will be deemed to have exhausted his/her administrative remedies after he/she has been denied the requested record or waiver/reduction of fees, by the designated Appellate Authority, or when the OIG FOIA/PA Division fails to respond to the request within the time limits prescribed by the FOIA, DoD 5400.7-R (32 CFR part 286) and this part. The requester may then seek judicial action from a U.S. District Court in the district in which the requester resides, has a principal place of business, in the district in which the record is located, or in the District of Columbia.

(6) Records that are denied on appeal shall be retained for a period of six years, in accordance with IGDM 5015.2,² “Records Management Manual,” to meet the statute of limitations of claims requirements.

APPENDIX TO § 295.5

EXTRACT

The material contained herein is an Extract of information from (Name of Original

Document), which has been determined to be in the public domain. The remaining material not provided herein may be requested under the provisions of the Freedom of Information Act.

§ 295.6 Responsibilities.

(a) The Assistant Inspector General (AIG) for Investigations is responsible for the overall implementation and administration of the FOIA program in the OIG, and for the designation of the IDAs.

(b) The Director, Investigative Support is designated as an IDA and is responsible for the overall operation of the FOIA program in the OIG.

(c) The Assistant Director, FOIA/PA Division, Investigative Support Directorate is designated as an IDA and will:

(1) Serve as the point of contact on all FOIA matters for the OIG.

(2) Coordinate and respond to all requests received from the public for records in accordance with the policy established and procedures set forth in this part, and in all applicable DoD directives, regulations and instructions.

(3) Coordinate requests received from the public for records to the extent considered necessary, with the DFOISR, OASD(PA), other DoD Components, other Federal agencies, and other OIG elements.

(4) Arrange for the collection of fees are prescribed by the policy as established in this part.

(5) Maintain the FOIA case files in accordance with IGDM Manual (IGDM) 5015.2,³ “Records Management Program”.

(6) Recommend action to be taken on all appeals of fees, appeals of fee waiver denials, and appeals of denials to access of records requested, to the Appellate Authority.

(7) Review OIG publications to assure that those which meet the FOIA “(a)(1)” and “(a)(2)” requirements for publication in the FEDERAL REGISTER are prepared in proper form and transmitted promptly for publication in the FEDERAL REGISTER.

(8) Maintain copies of material required to be made available under the “(a)(2)” provisions of the FOIA for examination and copying by the public,

²See footnote 1 to § 295.5(1).

³See footnote 1 to § 295.5(1).

and provide the required FOIA Reading Room for use by the public in doing so.

(9) Establish a training program for OIG personnel who are involved in preparing responsive records for release to the public under the FOIA.

(10) Prepare the Annual Report on the FOIA for forwarding to DFOISR, OASD(PA) as required by 32 CFR part 286.

(d) The AIGs and the Director, IG Regional Office-Europe will:

(1) Comply with, and assure compliance by all of their subcomponents with, the policy established and the procedures set forth in this part.

(2) Appoint a Point of Contact (POC) to interact with the FOIA/PA Division on all FOIA matters, and notify the FOIA/PA Division of any changes in the appointment.

(3) Provide all records responsive to a request as directed by the FOIA/PA Division.

(4) Recommend release/denial action to be taken, indicate applicable exemptions, and provide appropriate rationales.

(e) The Freedom of Information Act Appellate Authority is designated by the Inspector General and will:

(1) Determine the action to be taken on all appeals made by the public of fees, fee waiver/reduction denials, and access denials in accordance with chapter V, section 3, of DoD 5400.7-R (32 CFR part 286).

(2) Coordinate all appellate decisions with the Office of General Counsel, Assistant General Counsel (Fiscal and Inspector General).

(f) The AIG for Administration and Information Management will:

(1) Prepare annually an index of IG publications, statements and documents pertaining to any matter issued, adopted, or promulgated and required to be made available to the public by publication or sale.

(2) Establish and implement any necessary procedures to effect disciplinary action recommended by the Special Counsel of the Merit Systems Protection Board in cases involving the arbitrary and capricious withholding of information and records requested under the FOIA as required by chapter V, section 4, of DoD 5400.7-R (32 CFR part 286).

§ 295.7 Procedures.

(a) *General.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal governmental agencies seeking official information. The procedures for making requests, whether as a private party or governmental representative, are set forth below.

(b) *Requests From Private Parties.* (1) Members of the public may make requests in writing for copies of records, or permission to examine or copy records, directly to the FOIA/PA Division addressed to: Assistant Director, FOIA/PA Division, OAIG for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884.

(2) Requests must identify each record sought with sufficient specificity to enable the custodian to locate the record with a reasonable amount of effort. Requesters should provide such information as where the record originated and by whom, its subject matter, its approximate date or timeframe, which element of the OIG is likely to have custodianship, or any other similar information that would assist in locating the record. Requests must also contain a statement regarding willingness to pay fees.

(3) A request from an individual who made an allegation of wrongdoing to the IG, or any protected disclosure under the “Whistleblower Protection Acts,” and who is seeking the results of any investigation or inquiry conducted into the allegation, should identify him/herself as the “Whistleblower” in the request. The request should indicate whether he/she wishes to continue anonymity, should be notarized to avoid the risk of losing the anonymity, and should contain a statement regarding willingness to pay fees.

(4) A request for a personal record or investigative record pertaining to the individual making the request, that is in a system of records whether non-exempt or exempted from mandatory release under the Privacy Act, must be notarized to avoid the risk of invasion of personal privacy. In any such request, the individual may designate another individual to act as his/her representative in making the request and in receiving the records on his/her behalf; however, the authorization must